

Record and Return to:

EASEMENT AND RIGHT OF WAY AGREEMENT

For and in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt of and sufficiency of which hereby is acknowledged TOWN OF GUILDERLAND, a municipal corporation whose address is 5209 Western Turnpike, Guilderland, New York its successors and assigns, (hereinafter called "Grantor") for itself and its, successors and assigns hereby grants to KENNETH BARTH, and his successors and assigns, with an address at 185 Route 146, Altamont, New York 12009, (hereinafter called "Grantee") the following rights:

- (a) subject to the terms and conditions of this Agreement, the non-exclusive right within the Easement Area, as more particularly described in Schedule A hereto, to construct, entrench, inspect, maintain, operate, repair, replace, alter, remove, protect, or abandon in place an approximately 28 foot wide easement for ingress and egress and utilities one, over, under, through, or across the Easement Area.
- (b) the right of ingress and egress in, on, over and through the Easement Area for any and all purposes necessary or convenient to the exercise by Grantee of the rights and easements herein granted.
- (c) the right of ingress and egress as referenced in paragraph (b) shall be limited to the sole benefit of the two now-existing lots consisting of Lands of Barth Book 2019 of Deeds at page 11638 and Lands of Barth Book 2016 of Deeds at page 844.

Description of Property

A certain tract or parcel of land located in the Town of Guilderland and adjacent lands being more particularly partially described in that certain Deed to Town of Guilderland recorded with the Albany County Clerk at Deed Book 2016, page 844, of the Albany County, State of New York (herein the "Property").

Access to Easement area

Grantee shall have the right of ingress and egress over the Property to the Easement Area by use of existing roads or within the Easement Area. No additional roads or other means of access shall be constructed without Grantor's prior written consent. Such consent shall not be unreasonably withheld by Grantor.

Except as expressly provided herein, Grantee shall not have the right to install any associated equipment or facilities upon the Property without the express prior written consent of Grantor. Further, Grantee shall have no right to utilize the surface of the Grantor's Property in any manner, other than the temporary occupation and use in connection with the construction, maintenance or repair of the utilities as needed, without the express written consent of Grantor.

The Grantor shall have the right to use and enjoy the surface of Grantor's Property but shall not interfere with the use of the Easement area by Grantee as set forth herein. Grantor shall not

construct or maintain, or permit to be constructed or maintained, any building, structure, reservoir, excavation or obstruction on, over or under the Easement area that would materially impair access to the Easement Area, and shall not change the grade, alter the depth of soil cover, impound water or plant trees on the Easement area without the express written consent of the Grantee, which consent shall not be unreasonably withheld.

Grantor also grants to Grantee the right at any time, without additional compensation to Grantor, to keep the Easement area free of all timber, trees, undergrowth and other obstructions.

General Provisions

Grantee shall indemnify, defend, protect and hold Grantor their employees, agents, contractors, officers, partners and directors, harmless against any and all claims, demands, liabilities, damages, suits, actions, causes of actions, judgments, decrees, fines or penalties, including but not limited to those for personal injury, death or property damage, caused by or arising from the negligent or willfully wrongful: (i) operations or activities of Grantee; (ii) operations or activities undertaken by Grantee's contractors, officers, employees or (iii) agents under this Agreement or the presence of Grantee or its contractors, officers, employees or agents on the Property.

Grantee shall, at Grantee's sole cost at all times during the term of this Agreement the insurance coverages set forth below with companies satisfactory to Grantor with policy limits in amounts not less than those applicable for such coverages as set forth. A certificate naming Grantor as an additional insured (except with respect to worker's compensation coverage), evidencing coverages shall be delivered to Grantor prior to commencement of activities or operations hereto. Such certificate shall provide that any change restricting or reducing any such coverage or the cancellation of any policy under which any such certificate is issued shall not be valid as respects the Grantor's interest therein until the Grantor has received thirty (30) days' notice in writing of such change or cancellation:

a. **Comprehensive General Liability Insurance** - including broad contractual liability, damage to underground property, collapse of structures, environmental damage or pollution and damage resulting from explosion or blasting, with limits of liability of not less than \$1,000,000 combined single limit for bodily injury and property damage claims; and

This Agreement (including the documents referred to herein) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral regarding the subject matter hereof.

This Agreement is for the sole benefit of and binding upon the parties hereto and their permitted successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason hereof. The rights of Grantee may be assigned or transferred in whole or in part with Grantor's written consent, which consent shall not be unreasonably withheld.

This Agreement may not be amended or modified except by an instrument in writing signed

by the parties hereto. Waiver of any term or condition hereof shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition hereof.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed within the State.

On and after the date hereof, the parties shall take such other action and execute such other documents as may be reasonably requested by any other party hereto from time to time to effectuate or confirm the transaction contemplated hereunder and to record it with the County Clerk of Albany County.

This Agreement may be executed manually, electronically (.pdf) or by facsimile and in one or more counterparts, each of which when so executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions hereof.

This Agreement (including the documents referred to herein) constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral regarding the subject matter hereof.

[The remainder of this page is intentionally left blank.]

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, for so long as the pipeline(s) constructed hereunder is (are) used for the purposes set forth herein.

Signed and delivered on this _____ day of _____, 2022:

KENNETH BARTH

By: _____

Its: _____

TOWN OF GUILDERLAND

By: _____

Its:

SCHEDULE A

SUGGESTED DESCRIPTION
DRIVEWAY EASEMENT
TO BE GRANTED TO
LANDS OF BARTH

All that certain driveway easement situate in the Town of Guilderland, County of Albany, State of New York, lying along the northerly line of N.Y.S. Route 146, being further bounded and described as follows:

Beginning at the point of intersection of the common division line between lands of Huffman as described in Book 2016 of Deeds at Page 13719 to the West and lands of Town of Guilderland to the East with the northerly line of N.Y.S. Route 146, thence from said point of beginning northerly along said common division line about 322+ feet to a point in the southeasterly line of lands of Barth as described in Book 2717 of Deeds at Page 809, thence northeasterly along said southeasterly line about 28± feet to a point, thence southerly through aforesaid lands of Town of Guilderland about 326+ feet to a point in the northerly line of N.Y.S. Route 146, thence westerly along said northerly line about 26± feet to the point of beginning.